

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

AMERICAN GYPSUM COMPANY,

Plaintiff,

v.

Civil No. 01-787 WJ/RLP

GINA M. MILINOVICH, and BLACK
BEAR GYPSUM SUPPLY, INC. a/k/a
BEST NW,

Defendants.

**MEMORANDUM OPINION AND ORDER GRANTING
PLAINTIFF'S APPLICATION FOR JUDGMENT**

THIS MATTER is before the Court on Plaintiff's Application for Judgment by Default [Docket No. 28]. Having reviewed Plaintiff's submissions, I find that Plaintiff is entitled to the relief requested.

Plaintiff and Defendants entered into a settlement agreement. In accordance with that agreement, the parties filed a stipulated motion to dismiss. An Order of Dismissal was filed by the Court on March 5, 2002 dismissing the matter without prejudice. The Court expressly retained jurisdiction over the parties for the purpose of enforcing the settlement agreement in the event of default.

The relevant terms of the settlement agreement stated that Defendants would make monthly payments of varying amounts to Plaintiff beginning in February 2002 and ending in February 2003. In the event of a default, Defendants agreed to the entry of judgment on the original Complaint. The amount of judgment was to be the outstanding balance due at the time of

default in addition to the attorneys fees and costs accrued not to exceed five thousand dollars.

Defendants agreed that, in the event of a default, Plaintiff could obtain judgment by ex parte application supported by an affidavit of default executed by Plaintiff's counsel.

Plaintiff's counsel has submitted an application for judgment with an accompanying affidavit averring that Defendants defaulted on the settlement agreement by failing to make the November 2002 and December 2002 payments. In accordance with the settlement agreement, the payments due for each of those months was seven thousand dollars (\$7,000.00). In addition, Defendants were to make a seven thousand dollar (\$7,000.00) payment in January 2003 and a final payment of six thousand forty-seven dollars and forty cents (\$6047.40) in February 2003. Thus, at the time of default, the outstanding balance due was twenty-seven thousand forty-seven dollars and forty cents (\$27,047.40).

Plaintiff's counsel has also submitted an affidavit and accompanying documentation showing that the attorneys' fees and costs accrued to date exceed five thousand dollars (\$5,000.00). In accordance with the settlement agreement which sets a cap of five thousand dollars on the amount of recoverable fees and costs, Plaintiff requests the amount of five thousand dollars (\$5,000.00) for attorneys' fees and costs accrued to date.

I FIND that this Court has jurisdiction to enforce the settlement agreement entered into by the parties based on the express retention of jurisdiction in the Order of Dismissal [Docket No. 27].

I FURTHER FIND that Plaintiff has submitted an application for judgment that is in accordance with the terms of the settlement agreement.

I FURTHER FIND that Defendants have defaulted on the settlement agreement entered

into by the parties, and Plaintiff is entitled to judgment on the complaint entered against Defendants jointly and severally in accordance with the terms of the settlement agreement.

I FURTHER FIND that the outstanding balance due at the time of the default was twenty-seven thousand forty-seven dollars and forty cents (\$27,047.40) and that Plaintiff is entitled to judgment in this amount in accordance with the terms of the settlement agreement.

I FURTHER FIND that the attorneys' fees and costs accrued to date exceed five thousand dollars (\$5,000.00) and that Plaintiff is entitled to judgment in the amount of five thousand dollars (\$5,000.00) in accordance with the terms of the settlement agreement.

IT IS THEREFORE ORDERED that Plaintiff's Application for Judgment by Default [Docket No. 28] is hereby GRANTED and, accordingly, judgment be entered in this case for Plaintiff and against Defendant on Plaintiff's complaint in the amount of thirty-two thousand forty-seven dollars and forty cents (\$32,047.40).



UNITED STATES DISTRICT JUDGE